

M. WILLIAM JUDNICH
Enabled Law Group
P.O. Box 4523
Missoula, MT 59806
(406) 215-2340
(406) 721-3783 fax
mj@enabledlawgroup.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CURT SIMPSON,

Plaintiff,

- vs -

CHAFFEE LEGACY, LLC, and OLE'S
COUNTRY STORES, INC., d/b/a
OLE'S COUNTRY STORE #2,

Defendants.

CASE No.:

COMPLAINT

Plaintiff, CURT SIMPSON (hereinafter the "Plaintiff"), through undersigned counsel, hereby files this Complaint and sues CHAFFEE LEGACY, LLC, a Montana Limited Liability Company, and OLE'S COUNTRY STORES, INC., a Montana Corporation, d/b/a OLE'S COUNTRY STORE #2 (hereinafter, collectively the "Defendants"), for injunctive relief, attorney's fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C.

1 §12181, et. seq., (“AMERICANS WITH DISABILITIES ACT” or “ADA”) and
2 alleges:
3

4 **JURISDICTION AND PARTIES**

5 1. This is an action for declaratory and injunctive relief pursuant to Title
6 III of the Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter
7 referred to as the “ADA”). This Court is vested with jurisdiction under 28 U.S.C.
8 §1331 and §343.
9

10 2. Venue is proper in this Court, Missoula Division pursuant to 28
11 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in Missoula
12 County, Montana.
13

14 3. At the time of Plaintiff’s visit to Defendants’ Subject Facilities, prior
15 to instituting he instant action, CURT SIMPSON (hereinafter referred to as
16 “SIMPSON”), was a resident of the State of Montana, has an amputation of the
17 right leg and as such suffers from what constitutes a “qualified disability” under
18 the Americans with Disabilities Act of 1990, and used a wheelchair for mobility.
19 He is required to traverse with a wheelchair and is substantially limited to
20 performing one or more major life activities including, but not limited to, walking,
21 standing, grabbing, tight grasping, and/or pinching or twisting of the wrist.
22

23 4. The Plaintiff personally visited, on or about November 12, 2019
24 Defendants’ Subject Facilities, but was denied full and equal access to, and full and
25
26
27

1 equal enjoyment of, the facilities services, goods, privileges and accommodations
2 offered within Defendants' Subject Facilities, which is the subject of this lawsuit,
3
4 even though he would be classified as a "bona fide patron", because of his
5 disabilities. Plaintiff lives in Ravalli County, Montana, in close proximity to
6 Defendants, (within 18.29 miles) and travels in the surrounding areas near
7 Defendants' Subject Facilities on a regular basis.
8

9 5. The Defendants, CHAFFEE LEGACY, LLC, a Montana Limited
10 Liability Company, and OLE'S COUNTRY STORES, INC., a Montana
11 Corporation, d/b/a OLE'S COUNTRY STORE #2 are authorized to conduct and are
12 conducting business within the State of Montana.
13
14

15 6. Upon information and belief, OLE'S COUNTRY STORES, INC., a
16 Montana Corporation, is the lessee and/or operator of the real property (the
17 "Subject Facility"), and the owner of the improvements where the Subject Facility
18 is located which is the subject of this action, the establishment commonly referred
19 to as OLE'S COUNTRY STORE #2 located at 923 N. Orange Street, in Missoula,
20 Montana.
21
22

23 7. Upon information and belief, CHAFFEE LEGACY, LLC, a Montana
24 Limited Liability Company, is the lessor, operator and/or owner of the real
25 property (the "Subject Facility"), and the owner of the improvements where the
26 Subject Facilities are located which are the subjects of this action.
27

1 8. All events giving rise to this lawsuit occurred in the State of Montana.
2 Venue is proper in this Court as the premises are located in Missoula County in the
3 Montana District, Missoula Division.
4

5 **COUNT I – VIOLATIONS OF THE AMERICANS WITH**
6 **DISABILITIES ACT**
7

8 9. On or about July 26, 1990, Congress enacted the Americans with
9 Disabilities Act (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises
10 were provided one and a half years from enactment of the statute to implement its
11 requirements. The effective date of the Title III of the ADA was January 26, 1992.
12 42 U.S.C. §12181; 20 C.F.R. §36.508(a).
13

14 10. Congress found, among other things, that:
15
16 (i) some 43,000,000 Americans have one or more physical
17 or mental disabilities, and this number shall increase as the
18 population continues to grow older;
19
20 (ii) historically, society has tended to isolate and segregate
21 individuals with disabilities, and, despite some
22 improvements, such forms of discrimination against
23 disabled individuals continue to be a pervasive social
24 problem, requiring serious attention;
25
26 (iii) discrimination against disabled individuals persists in
27 such critical areas as employment, housing, public
accommodations, transportation, communication,
recreation, institutionalization, health services, voting
and access to public services and public facilities;

- (iv) individuals with disabilities continually suffer forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and regulation to lesser services, programs, benefits, or other opportunities; and,
- (v) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our country is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

42 U.S.C. §12101(a)(1)-(3), (5) and (9).

11. Congress explicitly stated that the purpose of the ADA was to:

- (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (ii) provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,
- (iii) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. §12101(b)(1)(2), and (4).

1 12. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, Defendants
2 are places of public accommodation in that they are establishments which provide
3 goods and services to the public.
4

5 13. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building
6 and/or Subject Facility which is the subject of this action is a public
7 accommodation covered by the ADA and which must be in compliance therewith.
8

9 14. The Plaintiff is informed and believes, and therefore alleges, that the
10 Subject Facility has begun operations and/or undergone remodeling, repairs and/or
11 alterations since January 26, 1990.
12

13 15. Defendants have discriminated, and continue to discriminate, against
14 the Plaintiff, and others who are similarly situated, by denying full and equal
15 access to, and full and equal enjoyment of, goods, services, facilities, privileges,
16 advantages and/or accommodations at Defendants' Subject Facilities in derogation
17 of 42 U.S.C. §12101, et. seq., and as prohibited by 42 U.S.C. §12182 et. seq., and
18 by failing to remove architectural barriers pursuant to 42 U.S.C.
19 §12182(b)(2)(a)(iv), where such removal is readily achievable.
20
21
22

23 16. The Plaintiff has been unable to, and continues to be unable to, enjoy
24 full and equal safe access to, and the benefits of, all accommodations and services
25 offered at Defendants' Subject Facilities. Prior to the filing of this lawsuit, the
26 Plaintiff visited the subject properties and was denied full and safe access to all the
27

1 benefits, accommodations and services of the Defendants. Prior to the filing of this
2 lawsuit, SIMPSON, personally visited OLE'S COUNTRY STORE #2 located at 923
3 N. Orange Street, located in Missoula, Montana with the intention of using
4 Defendants' facilities, but was denied full and safe access to the facilities, and
5 therefore suffered an injury in fact that is traceable to the Facilities actions. As
6 stated herein, the Plaintiff has visited the Subject Facilities in the past, prior to the
7 filing of this lawsuit, resides near said Subject Facility, and Plaintiff intends to
8 return to the Subject Facility and Property within six months, or sooner, upon the
9 Subject Facility being made accessible but is currently deterred from returning due
10 to these barriers. As such, Plaintiff is likely to be subjected to encountering
11 continuing discrimination at the Subject Facility unless it is made readily
12 accessible to and usable by individuals with disabilities to the extent required
13 under the ADA, including the removal of the architectural barrier which remain at
14 the Subject Facility. The injury in fact can be redressed by a favorable decision by
15 this Court.

16
17
18
19
20
21
22 17. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991,
23 the Department of Justice, Office of the Attorney General, promulgated Federal
24 Regulations to implement the requirements of the ADA, known as the Americans
25 with Disabilities Act Accessibility Guidelines (hereinafter "ADAAG"), 28 C.F.R.
26
27

1 Part 36, under which said Department may obtain civil penalties of up to \$110,000
2 for the first violation and \$150,000 for any subsequent violation.

3
4 18. The Defendants' Subject Facilities are in violation of 42 U.S.C.
5 §12182 et. seq., the ADA and 28 C.F.R. §36.302 et. seq., and is discriminating
6 against the Plaintiff, as a result of interalia, the following specific violations:
7

8 **VIOLATIONS**

9 a) Failure to provide ADA compliant number of van accessible parking stalls
10 at the subject property, in violation of 2010 ADAS and 2015 ABAAS
11 Section 208.2 and 208.4. This barrier failed to have any van accessible
12 parking stalls to allow Plaintiff van accessible parking which Plaintiff
13 requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and
14 such handicapped accessible parking stalls are necessary. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

15 b) Failure to provide ADA compliant number of accessible parking stalls
16 throughout the subject property, in violation of 2010 ADAS and 2015
17 ABAAS Section 208.2. This barrier failed to have any van accessible
18 parking stalls to allow Plaintiff van accessible parking which Plaintiff
19 requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and
20 such handicapped accessible parking stalls are necessary. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

21 c) Failure to provide ADA compliant access aisle at an accessible parking
22 stall, in violation of 2010 ADAS and 2015 ABAAS Section 502.2. This
23 barrier interfered with the Plaintiff's full and equal enjoyment of the facility
24 by failing to have a compliant Access Isle connected to a van accessible
25 parking stall to allow Plaintiff wheelchair access to the facility after exiting
26 his vehicle which Plaintiff requires as Plaintiff utilizes a wheelchair due to
27 the Plaintiff's disability. Said barrier is covered by the A.D.A. guidelines
and is in nonconformity with the requirements for such architecture.

1 d) Failure to provide ADA compliant parking stall signage, in violation of
2 2010 ADAS and 2015 ABAAS Section 502.6. This barrier interfered with
3 the Plaintiff's full and equal enjoyment of the facility by failing to have a
4 compliant handicapped parking space identification sign properly displayed
5 and mounted. Plaintiff failed to observe proper handicapped parking space
6 identification signs for required handicapped parking areas at Defendant's
7 establishment and Plaintiff requires handicapped wheelchair access parking
8 to the facility as Plaintiff utilizes a wheelchair due to the Plaintiff's
9 disability. Said barrier is covered by the A.D.A. guidelines and is in
10 nonconformity with the requirements for such architecture.

11 e) Failure to provide ADA compliant parking stall slope grading, in violation
12 of 2010 ADAS and 2015 ABAAS Section 502.4. This barrier interfered
13 with the Plaintiff's full and equal enjoyment of the facility by failing to
14 have a compliant wheelchair ramp with appropriate slope grading. Plaintiff
15 utilized a wheelchair in an attempt to enter Defendant's premises and
16 encountered a noncompliant wheelchair ramp with a non complaint slope
17 grade for wheelchair access that non-handicapped patrons could access
18 without barrier. Said barrier is covered by the A.D.A. guidelines and is in
19 nonconformity with the requirements for such architecture.

20 f) Failure to provide ADA compliant accessible parking stall on an
21 accessible route of travel leading to the building accessible entrance, in
22 violation of 2010 ADAS and 2015 ABAAS Section 208.3.1. This barrier
23 failed to have a compliant wheelchair accessible route of travel leading to
24 the building accessible entrance. Plaintiff utilized a wheelchair due to the
25 Plaintiff's disability in an attempt to enter Defendant's premises from the
26 parking lot and encountered this barrier that others without disability did
27 not encounter. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

g) Failure to provide ADA compliant ramp slope grading, in violation of
2010 ADAS and 2015 ABAAS Section 403.3. This barrier failed to have a
compliant wheelchair accessible ramp slope grading leading to the building
accessible entrance. Plaintiff utilized a wheelchair due to the Plaintiff's
disability in an attempt to enter Defendant's premises from the parking lot
and encountered this barrier that others without disability did not encounter.
Said barrier is covered by the A.D.A. guidelines and is in nonconformity
with the requirements for such architecture.

1 h) Failure to provide ADA compliant curb ramp flare slope grading, in
2 violation of 2010 ADAS and 2015 ABAAS Section 406.1 and 406.3. This
3 barrier failed to have a compliant wheelchair ramp flare with appropriate
4 slope grading. Plaintiff utilized a wheelchair due to the Plaintiff's disability
5 in an attempt to enter Defendant's premises from the parking lot and
6 encountered a noncompliant and/or nonexistent wheelchair ramp flare with a
7 non complaint slope grade for wheelchair access. Said barrier is covered by
8 the A.D.A. guidelines and is in nonconformity with the requirements for
9 such architecture.

10 i) Failure to provide ADA compliant curb ramp running slope grading, in
11 violation of 2010 ADAS and 2015 ABAAS Section 406.1. This barrier
12 failed to have a compliant wheelchair ramp running slope grading. Plaintiff
13 utilized a wheelchair due to the Plaintiff's disability in an attempt to enter
14 Defendant's premises from the parking lot and encountered a noncompliant
15 and/or nonexistent wheelchair ramp running slope grading for wheelchair
16 access. Said barrier is covered by the A.D.A. guidelines and is in
17 nonconformity with the requirements for such architecture.

18 j) Failure to provide ADA compliant unobstructed curb ramp width
19 clearance, in violation of 2010 ADAS and 2015 ABAAS Section 405.5 and
20 406.1. This barrier failed to have a compliant wheelchair route with
21 compliant clear width for a wheelchair accessible route. Plaintiff utilized a
22 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
23 premises from the parking lot and encountered a noncompliant walking
24 surface that was not wide enough to comply with clear width requirements
25 for wheelchair access that non-handicapped patrons could access without
26 barrier. Said barrier is covered by the A.D.A. guidelines and is in
27 nonconformity with the requirements for such architecture.

28 k) Failure to provide ADA compliant exterior route walkway width
29 clearance, in violation of 2010 ADAS and 2015 ABAAS Section 403.5.1.
30 This barrier failed to have a compliant wheelchair route with exterior route
31 walkway width clearance for a wheelchair accessible route. Plaintiff utilized
32 a wheelchair due to the Plaintiff's disability in an attempt to enter
33 Defendant's premises and encountered a noncompliant exterior route
34 walkway width clearance for wheelchair access that non-handicapped
35 patrons could access without barrier. Said barrier is covered by the A.D.A.
36 guidelines and is in nonconformity with the requirements for such
37 architecture.

1 l) Failure to provide ADA compliant walkway minimum width clearance, in
2 violation of 2010 ADAS and 2015 ABAAS Section 403.5.1. This barrier
3 failed to have a compliant wheelchair route with walkway minimum width
4 clearance for a wheelchair accessible route. Plaintiff utilized a wheelchair
5 due to the Plaintiff's disability in an attempt to enter Defendant's premises
6 and encountered a noncompliant walkway minimum width clearance for
7 wheelchair access that non-handicapped patrons could access without
8 barrier. Said barrier is covered by the A.D.A. guidelines and is in
9 nonconformity with the requirements for such architecture.

10 m) Failure to provide ADA compliant exterior number of accessible table
11 seating, in violation of 2010 ADAS and 2015 ABAAS Section 226.1. This
12 barrier failed to have a compliant exterior number of wheelchair accessible
13 table seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
14 an attempt to enter Defendant's premises and encountered inadequate
15 exterior number of accessible table seating with wheelchair access that non-
16 handicapped patrons could access without barrier. Said barrier is covered by
17 the A.D.A. guidelines and is in nonconformity with the requirements for
18 such architecture.

19 n) Failure to provide ADA compliant exterior table seating clearances, in
20 violation of 2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This
21 barrier failed to have a compliant exterior table seating clearances for
22 wheelchair accessible table seating. Plaintiff utilized a wheelchair due to the
23 Plaintiff's disability in an attempt to patronize Defendant's premises and
24 encountered inadequate exterior table seating clearances for wheelchair
25 access that non-handicapped patrons could access without barrier. Said
26 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
27 requirements for such architecture.

o) Failure to provide ADA compliant exterior front pull approach clearance,
in violation of 2010 ADAS and 2015 ABAAS Section 404.2.4.1. This
barrier failed to have exterior front pull approach clearance for wheelchair
access. Plaintiff utilized a wheelchair due to the Plaintiff's disability in an
attempt to patronize Defendant's premises and encountered noncompliant
exterior front pull approach clearance for wheelchair access that non-
handicapped patrons could access without barrier. Said barrier is covered by
the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

1 p) Failure to provide ADA compliant directional and informational signage
2 leading to an accessible entrance, in violation of 2010 ADAS and 2015
3 ABAAS Section 216.6. This barrier failed to have compliant directional and
4 informational signage leading to an accessible entrance for wheelchair
5 access. Plaintiff utilized a wheelchair due to the Plaintiff's disability in an
6 attempt to patronize Defendant's premises and encountered noncompliant
7 directional and informational signage leading to an accessible entrance for
8 wheelchair access that non-handicapped patrons could access without
9 barrier. Said barrier is covered by the A.D.A. guidelines and is in
10 nonconformity with the requirements for such architecture.

11 q) Failure to provide ADA compliant sales/service counter height, in
12 violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
13 Plaintiff encountered a non-complaint sales/service counter height by which
14 he could not readily exchange machinery items and payment, including point
15 of sale from his wheelchair due to the countertop being of non-compliant
16 height and the inaccessibility to these services that non-handicapped patrons
17 could access. Said barrier is covered by the A.D.A. guidelines and is in
18 nonconformity with the requirements for such architecture.

19 r) Failure to provide ADA compliant secured floor mats throughout the
20 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
21 302.2. Plaintiff encountered non-complaint secured floor mats by which he
22 had difficulty negotiating from his wheelchair which was a barrier that non-
23 handicapped patrons did not have. Said barrier is covered by the A.D.A.
24 guidelines and is in nonconformity with the requirements for such
25 architecture.

26 s) Failure to provide ADA compliant self-serve dispenser height, at several
27 self-serve dispenser areas throughout the subject facility, in violation of
2010 ADAS and 2015 ABAAS Section 308.1. This barrier failed to have
accessible self-serve dispensers at accessible wheelchair height that did not
allow him adequate reach ranges for equal access to self-service items while
in his wheelchair that non-handicapped patrons could access without barrier.
Said barrier is covered by the A.D.A. guidelines and is in nonconformity
with the requirements for such architecture.

t) Failure to provide ADA compliant self-serve counter dispenser height, in
violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
This barrier failed to have compliant self-serve counter dispenser height

1 accessible by wheelchair that non-handicapped patrons could access without
2 barrier. Said barrier is covered by the A.D.A. guidelines and is in
3 nonconformity with the requirements for such architecture.

4 u) Failure to provide ADA compliant self-serve dispensers height, in
5 violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
6 failed to have compliant self-serve dispensers height accessible by
7 wheelchair that non-handicapped patrons could access without barrier. Said
8 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
9 requirements for such architecture.

10 v) Failure to provide ADA compliant point of sale, merchandise and display
11 reach ranges, throughout the subject facility, in violation of 2010 ADAS and
12 2015 ABAAS Section 308.1. This barrier failed to have point of sale,
13 merchandise and display reach ranges, accessible by wheelchair that non-
14 handicapped patrons could access without barrier. Said barrier is covered
15 by the A.D.A. guidelines and is in nonconformity with the requirements for
16 such architecture.

17 w) Failure to provide ADA compliant circulation aisles throughout the
18 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
19 403.5.1. This barrier failed to have compliant circulation aisles accessible by
20 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
21 an attempt to enter Defendant's premises and encountered noncompliant
22 circulation aisles for wheelchair access that non-handicapped patrons could
23 access without barrier. Said barrier is covered by the A.D.A. guidelines and
24 is in nonconformity with the requirements for such architecture.

25 x) Failure to provide ADA compliant eat-in counter height, in violation of
26 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2. . This barrier
27 failed to have compliant eat-in counter heights with wheelchair access.
Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
enter Defendant's premises and encountered noncompliant eat-in counter
heights with wheelchair access that non-handicapped patrons could access
without barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

y) Failure to provide ADA compliant number of interior booth seating, in
violation of 2010 ADAS and 2015 ABAAS Section 226.1. This barrier
failed to have a compliant number of interior booth seating for wheelchair

1 accessible seating. Plaintiff utilized a wheelchair due to the Plaintiff's
2 disability in an attempt to enter Defendant's premises and encountered
3 inadequate number of interior booth seating with wheelchair access that non-
4 handicapped patrons could access without barrier. Said barrier is covered by
5 the A.D.A. guidelines and is in nonconformity with the requirements for
6 such architecture.

7 z) Failure to provide ADA compliant interior booth table clearances, in
8 violation of 2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This
9 barrier failed to have a compliant interior booth table clearances for
10 wheelchair accessible seating. Plaintiff utilized a wheelchair due to the
11 Plaintiff's disability in an attempt to enter Defendant's premises and
12 encountered inadequate interior booth table clearances with wheelchair
13 access that non-handicapped patrons could access without barrier. Said
14 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
15 requirements for such architecture.

16 aa) Failure to provide ADA compliant restroom directional and
17 informational signage, in violation of 2010 ADAS and 2015 ABAAS
18 Section 216.8. This barrier failed to have compliant restroom directional and
19 informational signage for wheelchair access. Plaintiff utilized a wheelchair
20 due to the Plaintiff's disability in an attempt to enter Defendant's premises
21 and encountered noncompliant restroom directional and informational
22 signage for wheelchair access that non-handicapped patrons could access
23 without barrier. Said barrier is covered by the A.D.A. guidelines and is in
24 nonconformity with the requirements for such architecture.

25 bb) Failure to provide ADA compliant restroom signage, in violation of
26 2010 ADAS and 2015 ABAAS Section 216.8. This barrier failed to have
27 compliant restroom signage for wheelchair access. Plaintiff utilized a
wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
premises and encountered noncompliant restroom signage for wheelchair
access that non-handicapped patrons could access without barrier. Said
barrier is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

cc) Failure to provide ADA compliant self-serve wall dispenser reach range,
in violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
failed to have compliant self-serve wall dispenser reach range accessible by
wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in

1 an attempt to enter Defendant's premises and encountered noncompliant
2 self-serve wall dispenser reach range for wheelchair access that non-
3 handicapped patrons could access without barrier. Said barrier is covered by
4 the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

5 dd) Failure to provide ADA compliant paper towel dispenser height, in
6 violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
7 failed to have compliant paper towel dispenser height accessible by
8 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
9 an attempt to enter Defendant's premises and encountered noncompliant
10 paper towel dispenser height for wheelchair access that non-handicapped
11 patrons could access without barrier. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

12 ee) Failure to provide ADA compliant mirror height, in violation of 2010
13 ADAS and 2015 ABAAS Section 603.3. This barrier failed to have
14 compliant mirror height accessible by wheelchair. Plaintiff utilized a
15 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
16 premises and encountered noncompliant mirror height for wheelchair access
17 that non-handicapped patrons could access without barrier. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

18 ff) Failure to provide ADA compliant properly insulated pipes, in violation
19 of 2010 ADAS and 2015 ABAAS Section 606.5. This barrier failed to have
20 compliant properly insulated bathroom pipes accessible by wheelchair.
21 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
22 enter Defendant's premises and encountered noncompliant properly
23 insulated pipes for wheelchair access that non-handicapped patrons could
access without barrier. Said barrier is covered by the A.D.A. guidelines and
is in nonconformity with the requirements for such architecture.

24 gg) Failure to provide ADA compliant soap dispenser reach range, in
25 violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
26 failed to have compliant soap dispenser reach range accessible by
27 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
an attempt to enter Defendant's premises and encountered noncompliant
soap dispenser reach range for wheelchair access that non-handicapped

1 patrons could access without barrier. Said barrier is covered by the A.D.A.
2 guidelines and is in nonconformity with the requirements for such
3 architecture.

4
5 19. The above-referenced barriers will likely cause a repeated real injury in
6 fact in a similar way as listed if not remedied when the Plaintiff frequents this
7 property again as described previously. Each of these barriers interfered with the
8 Plaintiff's full and equal enjoyment of the facility by failing to allow Plaintiff the
9 same access due to the Plaintiff's disability as those enjoy without disabilities.
10

11 20. Upon information and belief, there are other current violations of the
12 ADA at Defendants' Properties, and only once a full inspection is done can all said
13 violations be identified due to Plaintiff being deterred from discovering each and
14 every barrier as a result of encountering the above-listed violations.
15
16

17 21. To date, the readily achievable barriers and other violations of the
18 ADA still exist and have not been remedied or altered in such a way as to
19 effectuate compliance with the provisions of the ADA. The barriers to access at
20 the Subject Facilities, as described above, have severely diminished Plaintiff's
21 ability to avail himself of the goods and services offered at the Subject Facilities,
22 and compromise his safety.
23
24

25 22. Pursuant to the ADA, 42 U.S.C. §12101 et. seq., and 28 C.F.R.
26 §36.304, the Defendants were required to make the Subject Facility, a place of
27

1 public accommodation, accessible to persons with disabilities since January 28,
2 1992. To date, the Defendants have failed to comply with this mandate.

3
4 23. The Plaintiff has been obligated to retain the undersigned counsel for
5 the filing and prosecution of this action. The Plaintiff is entitled to have his
6 reasonable attorney's fees, costs and expenses paid by the Defendants, pursuant to
7
8 42 U.S.C. §12205.

9 24. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority
10 to grant the Plaintiff's injunctive relief; including an order to alter the subject
11 facilities to make them readily accessible to, and useable by, individuals with
12 disabilities to the extent required by the ADA and closing the subject facility until
13 the requisite modifications are completed.
14
15

16 25. The Plaintiff has standing for injunctive relief as to any other barriers
17 at the Subject Facility related to his disability even if Plaintiff is not deterred from
18 returning to the public accommodation at issue pursuant to *Chapman v. Pier 1*
19 *Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011).
20

21 WHEREFORE, the Plaintiff hereby demands judgment against the
22 Defendants and the Court declare that the subject property and Subject Facilities
23 owned, operated, leased, controlled and/or administered by the Defendants are
24 violative of the ADA;
25
26
27

- 1 A. The Court enter an Order requiring the Defendants to alter their
2 facilities and amenities to make them accessible to and usable by
3 individuals with disabilities to the full extent required by Title III of
4 the ADA;
5
6 B. The Court enter an Order directing the Defendants to evaluate and
7 neutralize their policies, practices and procedures toward persons with
8 disabilities, for such reasonable time so as to allow the Defendants to
9 undertake and complete corrective procedures to the Subject Facility;
10
11 C. The Court award reasonable attorney's fees, all costs (including, but
12 not limited to court costs and expert fees) and other expenses of suit,
13 to the Plaintiff; and
14
15 D. The Court award such other and further relief as it deems necessary,
16 just and proper.
17
18

19
20 Dated: This 22nd day of November, 2019.
21

22
23 By: /s/ M. William Judnich
24 M. William Judnich
25 Attorney for Plaintiff
26
27